THE ONTARIO HUMAN RIGHTS CODE
S.O. 1981, c. 53,
as amended

IN THE MATTER OF the complaint made by G. Michael Roosma of Burlington, Ontario, dated 29 August 1985, as amended 31 October 1986, alleging discrimination in employment on the basis of creed, reprisal and constructive discrimination by Ford Motor Company of Canada Ltd. and The National Automobile and Agricultural Implement Workers of Canada, CAW Canada, Local 707.

AND IN THE MATTER OF the complaint made by Robert Weller of Mississauga, Ontario, dated 5 September 1985, as amended 31 October 1986, alleging discrimination in employment on the basis of creed and constructive discrimination by Ford Motor Company of Canada Ltd. and National Automobile and Agricultural Implement Workers of Canada CAW, Local 707.

BOARD OF INQUIRY

P.P. Mercer
Chairman

APPEARANCES

Mr. D. Lepofsky Ms. J. Minor	Counsel for the Ontario Human Rights Commission
Mr. R.G. Juriansz	Counsel for the Respondent Ford Motor Company
Mr. L.A. MacLean, Q.C.	Counsel for the respondent Union

Hearings in the above matter were held in Toronto, Ontario on August 18 and 20, 1987 and in London, Ontario on August 21, 1987.

REASONS FOR DECISION ON PRELIMINARY MOTIONS

At the commencement of the hearing into these complaints, counsel raised a number of preliminary matters. The first involved a requested amendment to the complaint to recognize the change in name of the respondent union. This was effected on consent (Volume 1, p. 2). The second was a request that the complaints against the named individuals be formally dismissed so that their names would be removed from the record. It was agreed by all counsel that any actions of the individuals were actions taken solely on behalf of the company or union. Consequently, the names of the individuals were ordered expunged from the record (Volume 1, page 20) and the complaints against them are formally dismissed.

The remaining preliminary matters were raised in the formal context of three preliminary motions. These reasons relate exclusively to the decisions on those preliminary motions.

1. That the Human Rights Code, 1981, S.O. 1981, c. 53, section 10(a) does not impose a duty of reasonable accommodation.

Section 10 of the Human Rights Code, 1981, provides as follows:

> 10. A right of a person under Part I is infringed where a requirement, qualification or consideration is imposed that is not discrimination on a prohibited ground but that would result in the exclusion, qualification or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,

(a) the requirement, qualification or consideration is a reasonable and bona fide one in the circumstances; or

(b) it is declared in this Act that to discriminate because of such ground is not an infringement of a right. 1981, c. 53, s. 10.

On behalf of the Ford Motor Company, Mr. Juriansz submitted that a prima facie case of constructive discrimination on the basis of creed, made out under the opening words of section 10, fails if, under section 10(a), "the requirement, qualification or consideration is a reasonable and bona fide one in the circumstances". According to this submission, which was supported by counsel for the respondent Union, that is the end of the matter and section 10(a) imports no duty of reasonable accommodation.

The starting point of the Ford Motor Company's argument on this submission was that the decision of the Supreme Court of Canada in Ontario Human Rights Commission and Theresa O'Malley (Vincent) v. Simpsons Sears Ltd. [1985] 2 S.C.R. 536 does not apply to the present case. The O'Malley case concerned an appeal by O'Malley against her employer, Simpsons-Sears Limited, alleging discrimination on the basis of creed contrary to the provisions of the legislation in place at the time of the events giving rise to the proceedings. Those provisions, in section 4(1)(g) of the Ontario Human Rights Code, R.S.O. 1980, c. 340, are as follows:

4.-(1) No person shall,

....

(g) discriminate against any employee with regard to any term or condition of employment.

because of race, creed, colour, age, sex, marital status, nationality, ancestry, or place of origin of such person or employee.

Mrs. O'Malley had been employed by Simpsons-Sears for approximately seven years when, in October 1978, she became a member of the Seventh-Day Adventist Church. It was a condition of employment that Mrs. O'Malley, a full-time sales clerk, work on Friday evenings on a rotating basis and on two Saturdays out of three. However, a tenet of the Seventh-Day Adventist faith is that its Sabbath, extending from sundown Friday to sundown Saturday, be strictly kept. Consequently, O'Malley took the position that her faith prevented her from working for Simpsons-Sears on Saturdays.

In a unanimous judgment, the Supreme Court of Canada held that O'Malley was discriminated against on the basis of creed. Crucial to this judgment was the Court's finding that it was not necessary to prove that discrimination was intentional to find that a violation of the Ontario Human Rights Code had occurred. An employment condition, made honestly and in good faith and neutral on its face, can still have discriminatory effects and it is this "adverse effect" which is important in determining whether discrimination has occurred.

Having found adverse effect discrimination on the basis of creed, the Supreme Court of Canada had to decide whether O'Malley was automatically entitled to the remedies provided under the Ontario Human Rights Code. Mr. Justice McIntyre, speaking for the Court at p. 552, approached the issue as follows:

> No question arises in a case involving direct discrimination. Where a working rule or condition of employment is found to be discriminatory on a prohibited ground and fails to meet any statutory justification test, it is simply struck down: see the Etobicoke case, supra. In the case of discrimination on the basis of creed resulting from the effect of a condition or rule rationally related to the performance of the job and not on its face discriminatory a different result follows. The working rule or condition is not struck down, but its effect on the

> complainant must be considered, and if the purpose of the Ontario Human Rights Code is to be given effect some accommodation must be required from the employer for the benefit of the complainant.

His Lordship then referred to a number of American decisions prescribing a duty to accommodate short of undue hardship on the part of the employer. He then concluded, at page 555, that although there was no express statutory base for such a duty in the Ontario Human Rights Code, the general provisions and intent of the Code imported the requirement that the employer take reasonable steps towards accommodation:

> Accepting the proposition that there is a duty to accommodate imposed on the employer, it becomes necessary to put some realistic limit upon it. The duty in a case of adverse effect discrimination on the basis of religion or creed is to take reasonable steps to accommodate the complainant, short of undue hardship: in other words, to take such steps as may be reasonable to accommodate without undue interference in the operation of the employer's business and without undue expense to the employer. Cases such as this raise a very different issue from those which rest on direct discrimination. Where direct discrimination is shown the employer must justify the rule, if such a step is possible under the enactment in question, or it is struck down. Where there is adverse effect discrimination on account of creed the offending order or rule will not necessarily be struck down. It will survive in most cases because its discriminatory effect is limited to one person or to one group, and it is the effect upon them rather than upon the general work force which must be considered. In such case there is no question of justification raised because the rule, if rationally connected to the employment, needs no justification; what is required is some measure of accommodation. The employer must take reasonable steps towards that end which may or may not result in full accommodation. Where such reasonable steps, however, do not fully reach the desired end, the complainant, in the absence of some accommodating steps on his own part such as an acceptance in this case of part-time work, must either sacrifice his religious principles or his employment.

The Supreme Court of Canada also found that the onus of proving that accommodation would have resulted in undue hardship was on the employer. As Simpsons-Sears did not call any evidence on the matter, it did not discharge the onus of showing that accommodating O'Malley would have created undue hardship and O'Malley's complaint was upheld.

Counsel for the respondent company then referred to the decision of the Supreme Court of Canada in K.S. Bhinder and The Canadian Human Rights Commission v. The Canadian National Railway Company [1985] 2 S.C.R. 560. This decision was issued the same day as the O'Malley decision but, unlike O'Malley, it was not unanimous. Reasons for judgment were again given by McIntyre J., with Justices Estey and Chouinard concurring, with concurring reasons by Madame Justice Wilson, Beetz J. concurring and dissenting reasons by Chief Justice Dickson, Lamer J. concurring. Counsel laid great stress on the fact that in the Bhinder case, where the purpose of the legislation and the interpretive approach were the same as in O'Malley, the Supreme Court of Canada nonetheless reached the opposite conclusion and found no duty to accommodate. This different result was generated by the fact that the statutory provisions were different in the two cases and counsel submits that the provisions of section 10 of the Human Rights Code, 1981 applicable to this case should be interpreted according to the Bhinder rationale.

The Bhinder case arose under the Canadian Human Rights Act, S.C. 1976-77, c. 33. Bhinder was employed as a maintenance electrician with the Canadian National Railway Company in its Toronto coach yard. He had been working for over four years when CN announced that all employees would be required to wear a hard hat while working. Bhinder refused to wear the hard hat on the basis that, as a Sikh, he was forbidden to wear anything on his head except a turban. Consequently, his employment with CN

ceased and he filed a complaint under sections 7 and 10 of the Canadian Human Rights Act:

> 7. It is a discriminatory practice, directly or indirectly,
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> (a) to refuse to employ or continue to employ any individual, or
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> (b) in the course of employment, to differentiate adversely in relation to an employee
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> on a prohibited ground of discrimination.
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> 10. It is a discriminatory practice for an employer or an employer organization
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> (a) to establish or pursue a policy or practice, or
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> (b) to enter into an agreement affecting recruitment, referral, hiring, promotion, training, apprenticeship, transfer or any other matter relating to employment or prospective employment
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> that deprives or tends to deprive an individual or class of individuals of any employment opportunities on a prohibited ground of discrimination.

Of particular importance in the Bhinder case, and to the argument made by counsel for the respondent company on the preliminary motion in this case, is the following section:

> 14. It is not a discriminatory practice if
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> (a) any refusal, exclusion, expulsion, suspension limitation, specification or preference in relation to any employment is established by an employer to be based on a bona fide occupational requirement.

The Supreme Court of Canada repeated its finding in O'Malley v. Simpsons-Sears Ltd. that it is not necessary to show an intention to discriminate and concluded that the definitions of discriminatory practices in sections 7 and 10 of the Canadian

Human Rights Act extended to both unintentional and adverse effect discrimination. As McIntyre J. put it, at page 586:

> The facts in this case and in that of O'Malley are identical in principle and the only significant difference between the two governing statutes as far as this case is concerned is the presence of s. 14(a) in the Canadian Human Rights Act creating the bona fide occupational requirement defence. The fundamental point then on which this case must turn is the question of whether the hard hat rule is a bona fide occupational requirement and, if so, what effect must be given to s. 14(a) of the Act?

The Court applied the test enunciated in Ontario Human Rights Commission et al. v. Borough of Etobicoke [1982] 1 S.C.R. 202 at 208, in finding that the hard hat rule was a bona fide occupational requirement.

The Court also rejected the appellants' contention that the test should be applied on an individual basis so that satisfaction of the test would depend on the particular characteristics of the individual complainant and the special circumstances of the case. At page 589, McIntyre J. stated the following:

> It was said in Etobicoke that the rule under The Ontario Human Rights Code was non-discrimination, while the exception was discrimination. This is equally true of the Canadian Human Rights Act. The Tribunal was of the opinion that a liberal interpretation should be applied to the provisions prohibiting discrimination and a narrow interpretation to the exceptions. Accepting this as correct, it is nevertheless to be observed that where s. 14(a) applies, the subsection in the clearest and most precise terms says that where the bona fide occupational requirement is established, it is not a discriminatory practice. To conclude then that an otherwise established bona fide occupational requirement could have no application to one employee, because of the special characteristics of that employee, is not to give s. 14(a) a narrow interpretation; it is simply to ignore its plain

> language. To apply a bona fide occupational requirement to each individual with varying results, depending on individual differences, is to rob it of its character as an occupational requirement and to render meaningless the clear provisions of s. 14(a).

Finally, his Lordship summarized the differences between the O'Malley and Bhinder cases, at page 590:

> I cannot, however, leave this case, without further reference to the case of O'Malley. On facts for all purposes identical to those at bar, Mrs. O'Malley has received protection from the religious discrimination against which she complained and Bhinder has not. The difference in the two cases results from the difference in the two statutes. The Ontario Human Rights Code in force in the O'Malley case prohibited religious discrimination but contained no bona fide occupational requirement for the employer. The Canadian Human Rights Act contains a similar prohibition, but in s. 14(a) is set out in the clearest terms the bona fide occupational requirement defence. As I have already said, no exercise in construction can get around the intractable words of s. 14(a) and Bhinder's appeal must accordingly fail. It follows as well from the foregoing that there cannot be any consideration in this case of the duty to accommodate referred to in O'Malley and contended for by the appellants. The duty to accommodate will arise in such a case as O'Malley, where there is adverse effect discrimination on the basis of religion and where there is no bona fide occupational requirement defence. The duty to accommodate is a duty imposed on the employer to take reasonable steps short of undue hardship to accommodate the religious practices of the employee when the employee has suffered or will suffer discrimination from a working rule or condition. The bona fide occupational requirement defence set out in s. 14(a) leaves no room for any such duty for, by its clear terms where the bona fide occupational requirement exits, no discriminatory practice has occurred. As framed in the Canadian Human Rights Act, the bona fide occupational requirement defence when established forecloses any duty to accommodate.

Counsel for the respondent company, supported by counsel for the respondent union, advanced the view that section 14(a) of the

Canadian Human Rights Act was treated in the Bhinder case, not as a defence to discrimination nor as an exception but as part of the very definition of discrimination. Consequently, it was submitted, following the Etobicoke principle set out above, section 14(a) was found to be deserving of the same large liberal interpretation as the rest of the statute. Likewise, the respondents argue, section 10(a) of the Ontario Human Rights Code 1981 should be construed as part of the definition of constructive discrimination and not as an exception or defence. Such a construction, it was submitted, would yield the result that section 10(a) does not impose a duty of reasonable accommodation on either respondent.

A number of points were raised in support of this proposition. The first draws on the judgment of Wilson J. in the Bhinder case. In separate reasons, concurring with the result and reasoning of McIntyre J., Madame Justice Wilson compared the dissenting view of the Chief Justice (at page 579-580):

> I have had the benefit of the reasons of both McIntyre J. and the Chief Justice and the difference between them, it seems to me, hinges on the meaning to be given to the phrase bona fide in s. 14(a) of the Act. If bona fide is used in the section simply to mean a genuine occupational requirement, i.e., that the wearing of a hard hat is as an objective factual matter a requirement for the appellant's job, then it seems to me that the Tribunal implicitly found that it was. The Tribunal, however, and the Chief Justice agrees, found that that was not what the legislature intended by bona fide. It intended that the bona fides of an occupational requirement be assessed in relation to each employee. The same occupational requirement might be bona fide vis-a-vis X but not vis-a-vis Y. By taking this approach the same result can, of course, be reached as if the section were not in the Act at all since, absent the section, the employer is obliged to accommodate the individual employee up to the point of undue hardship even if the requirement is a bona fide occupational one: see Ontario Human Rights Commission and O'Malley v. Simpsons-Sears Ltd., [1985] 2 S.C.R. 536 (judgment delivered concurrent herewith). If the

> employer fails to do so, it is discriminating under the Act. The Tribunal finds that, if it fails to do so, its occupational requirement is not bona fide vis-a-vis that employee within the meaning of s. 14(a).
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> With respect, I do not think it is open to us under the statute to give the words bona fide a meaning which would have the effect of nullifying a provision which says that an employer will not be guilty of a discriminatory practice if the requirement he attaches to the job is a genuine requirement of that job. The purpose of s. 14(a) seems to me to be to make the requirement of the job prevail over the requirement of the employee. It negates any duty to accommodate by stating that it is not a discriminatory practice. I agree with McIntyre J. that discrimination is per se victim related but the occupational requirement is job related. This is, I believe, why s. 14(a) provides that a genuine occupational requirement is not a discriminatory practice as opposed to making it a defence to a charge of discrimination which would enable the employer to establish that he had discharged his duty to accommodate the particular complainant up to the point of undue hardship.

Counsel urged the same approach be taken to section 10 of the Ontario Human Rights Code 1981, on the basis that if section 10(a) were taken out, the Code, after the O'Malley decision, would still impose a duty of accommodation to the point of undue hardship. Consequently, on this view, section 10(a) cannot be found to import a duty to accommodate without becoming completely redundant.

In assessing the respondents' argument it must be emphasized that O'Malley was decided under the pre-1981 Ontario Code and Bhinder was decided under the Canadian Human Rights Code. Neither of those pieces of legislation deals specifically with constructive or adverse effects discrimination. In both cases, recognition of adverse effects discrimination was the product of judicial inference. The present case, however, falls to be decided under section 10 of the Ontario Human Rights Code, 1981 and the unique feature of section 10 is that it is explicitly

directed to constructive or adverse effects discrimination. Thus, the scope of section 10(a) is to be determined primarily by reference to the explicit provisions of section 10 and less by inference from previous decisions under different statutory regimes.

The first feature of section 10 to be noted is that a right of a person is stated to be infringed by constructive discrimination "except where (a) the requirement, qualification or consideration is a reasonable and bona fide one in the circumstances". In my view, this clearly marks section 10(a) as exceptional and not part of the definition of constructive discrimination. According to the principle established in Etobicoke, and accepted by the Supreme Court of Canada in Bhinder, it is therefore to be interpreted narrowly. I accept the submission of counsel for the Ontario Human Rights Commission that, on a proper interpretation, section 10(a) does impose a duty of reasonable accommodation short of undue hardship.

In so concluding, I reject the view that section 10(a) is thereby made redundant because a duty to accommodate would nevertheless have arisen in its absence by virtue of the decision in O'Malley. The O'Malley case concerned the predecessor to the 1981 Code under which constructive discrimination was not expressly contemplated. Its effect logically precludes a duty to accommodate in Bhinder given the specific terms of section 14(a) of the Canadian Human Rights Act and the fact that protection against constructive discrimination is there also a product of judicial inference rather than explicit statutory recognition. However, the O'Malley decision cannot be logically extended to preclude a duty to accommodate under successor legislation whose language is substantially different and which deals with constructive discrimination directly.

Indeed, the legacy of O'Malley is more appropriately recognized through finding that a duty of reasonable accommodation is imposed by the 1981 Code. Otherwise, one would have to conclude that the 1981 Code effectively repealed the duty to accommodate which O'Malley had established as existing under its predecessor. In my view that proposition is unsupportable.

In the first place, the language of section 10(a) is quite specific. Not only must the requirement, qualification or consideration be a bona fide one, it must be a "reasonable and bona fide one in the circumstances" (emphasis mine). These words solve the dilemma, evident in the contrast between the majority and dissenting judgments in Bhinder, over whether an occupational requirement is to be considered only at a general level or in light of the particular circumstances of the complainant. A neutral "requirement, qualification or consideration" which gives rise to constructive discrimination is only allowed to operate as an exception where it is reasonable and bona fide in the circumstances. And it is only reasonable in the circumstances, consistent with O'Malley, if accommodation cannot be accomplished without undue hardship. As noted by counsel for the Commission, the view that the words "in the circumstances" import a duty to accommodate in the particular circumstances of the individual complainant, is supported by Keene, Human Rights in Ontario (Carswell, 1983) at page 118.

The final argument made by counsel for the respondent company on this motion arises out of the amendment created under An Act to amend certain Ontario Statutes to conform to section 15 of the Canadian Charter of Rights and Freedoms, S.O. 1986, c. 64. Section 18(8) of this Act, which has not yet been proclaimed in force, provides that section 10 of the Ontario Human Rights Code 1981 is repealed and the following substituted therefor:

> 10.-(1) A right of a person under Part I is infringed where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,
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> (a) the requirement, qualification or factor is reasonable and bona fide in the circumstances; or
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> (b) it is declared in this Act, other than in section 16, that to discriminate because of such ground is not an infringement of a right.
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> -(2) The Commission, a board of inquiry or a court shall not find that a requirement, qualification or factor is reasonable and bona fide in the circumstances unless it is satisfied that the needs of the group of which the person is a member cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.
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> -(3) The Commission, a board of inquiry or a court shall consider any standards prescribed by the regulations for assessing what is undue hardship.

Briefly put, the respondents' argument is that the new provisions are necessary to redress the inequality under the present Code which now provides for accommodation only under sections 40(2) and 40(3). On this submission it was necessary in order to provide equal protection as required by section 15 of the Charter, to bring in a general duty of accommodation because no such duty now exists. If such a duty does exist, argue the respondents, then why did the legislature bother creating a new section 10.

I am also unable to accept this argument. In the first place, the Interpretation Act, R.S.O. 1980, c. 219 provides that:

> 17. The repeal or amendment of an Act shall be deemed not to be or to involve any declaration as to the previous state of the law.

This is a clear pronouncement which runs contrary to the respondents' argument. Secondly, I believe the respondents' reliance on section 40 is misplaced since it is directed to remedies and not to rights. Thirdly, it is my view that, even in the absence of section 17 of the Interpretation Act, the new amendment does not support the inference which the respondents seek to draw. The 1986 amendment merely confirms the duty to accommodate and further specifies the considerations to be applied in assessing undue hardship.

For these reasons, I conclude that section 10 of the Ontario Human Rights Code, 1981 does impose a duty of proving accommodation short of undue hardship where a prima facie case of constructive discrimination on the basis of creed has been made out.

2. That The National Automobile and Agricultural Implement Workers of Canada, CAW Canada, Local 707, cannot properly be joined as a respondent allegedly in violation of sections 4(1), 8 and 10 of the Ontario Human Rights Code, 1981.

Counsel for the respondent union submits that, on the language of the Ontario Human Rights Code, 1981, a trade union cannot properly be found to have violated the provisions of sections 4(1) and 8, set out below:

> 4.-(1) Every person has the right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, record of offences, marital status, family status or handicap.

> 8. No person shall infringe or do, directly or indirectly anything that infringes a right under this part.

Counsel submits that provision of the right to equal treatment with respect to employment is "peculiarly an employer's function" (Volume 1, page 78) and that the trade union should be viewed as a third party.

As I read the language of these provisions, counsel's argument cannot be accepted. Section 4(1) simply establishes the right of every person to equal treatment with respect to employment; section 8 is the provision which actually prohibits the infringement of that right. Therefore it is the language of section 8 which is crucial to the argument put forward on behalf of the respondent union.

There are two features of section 8 which indicate that a trade union may properly be joined as a respondent. The first is that "person" is defined, as counsel noted, to include a trade union under section 45(c) of the Code. The second is that an infringement may arise "directly or indirectly". Thus, while issues involving the right to equal treatment with respect to employment might usually be expected to arise "directly" between the employee and employer, section 8 clearly contemplates them arising at least "indirectly" between employees and other persons, including trade unions.

Strictly by interpretation of the language of the Code, which is the only support adduced by counsel for the union, a trade union is capable of infringing a right under section 4(1) and, by logical extension, is also at least susceptible to the application of section 10. Counsel also stressed that the rights claimed by the complainants must be considered in the context of a collective agreement which governs the rights of thousands of

other employees. These considerations are no doubt of great importance to this case but in my view they go to merits and not to the matter of whether the union may be joined.

3. That the complaints do not adequately allege a violation of the Ontario Human Rights Code, 1981 by The National Automobile and Agricultural Implement Workers of Canada, CAW Canada, Local 707.

Counsel for the respondent union takes the position that, even if it is proper for the trade union to be joined as a respondent, the actual complaints do not disclose an alleged violation of the Ontario Human Rights Code, 1981 by the union. Counsel for the Commission submits that there is adequate disclosure on the face of the complaints and referred specifically to paragraph 4. Paragraph 4 of Mr. Roosma's complaint, dated August 29, 1985, is substantially identical to paragraph 4 of Mr. Weller's complaint dated September 5, 1985 and reads as follows:

> Because my work schedule precludes me from observing the Sabbath on two Fridays of every month, in or around October 1984 Robert Weller, a co-worker and member of the Worldwide Church of God, and I went to see Mr. Van Gaal, Vice-President of the United Auto Workers local #707. We asked Mr. Van Gaal if he could be of assistance in helping us to keep God's commandments concerning the Sabbath observance. We offered to work extra hours through the week or to come in on Sundays. Mr. Van Gaal advised that the union was unable to assist us because of the collective agreement.

Both complaints also list The United Auto Workers, Local 707 (as it then was) as a respondent. Both complaints also allege their "right to equal treatment in employment with discrimination has been infringed by the above cited respondents because of ... creed, in contravention of sections 4(1) and 8 of the Human Rights Code, 1981" (Roosma Complaint, paragraph 10; Weller Complaint, paragraph 9) and that their right to equal treatment

in employment without discrimination has been infringed in contravention of section 10 (Roosma Complaint, paragraph 11; Weller Complaint, paragraph 10). These allegations are unaffected by the amendments to the Complaints on October 31, 1986.

It is my ruling that the complaints do adequately allege a violation of the Ontario Human Rights Code, 1981. Counsel for the respondents referred in argument to section 8 of the Statutory Powers Procedure Act R.S.O. 1980, c. 484 which provides:

> Where the good character, propriety of conduct or competence of a party is an issue in any proceedings, the party is entitled to be furnished prior to the hearing with reasonable information of any allegations with respect thereto.

Section 8 does not specify what information must be included in the complaint either generally, or with respect to the specific allegation of a contravention. Its effect is to require that, prior to the hearing, a respondent receive sufficient information about the allegations to enable preparation of an answer to those allegations; Nembhard v. Caneurop Manufacturing Limited, Ontario Human Rights Commission Board of Inquiry, 1976, unreported at page 22; referred to by Keene, Human Rights in Ontario, at page 246. Counsel on all sides argued at some length over sufficiency of particular, the late date at which documents and other submissions had been received and the like. It may be that requests for particulars will be forthcoming. However, this motion alleges that no contravention of the code by the Union is adequately revealed by the complaints. I am not prepared to hold that the complaints are materially defective in this regard because, on the terms of the complaints identified above, I believe that the alleged contraventions are set out on the face of the complaints.

I of course remain seized of this matter pending the continuance of the hearing.

DATED at London, Ontario, the 20th day of November, 1987.

Peter P. Mercer
Board of Inquiry